

**aTEXAS DEPARTMENT OF INSURANCE  
EXEMPT FILING NOTIFICATION UNDER TEXAS INSURANCE CODE  
CHAPTER 5, SUBCHAPTER L, ARTICLE 5.96**

***ADOPTION OF THE NATIONAL COUNCIL ON COMPENSATION INSURANCE  
EXPERIENCE RATING PLAN MANUAL FOR WORKERS COMPENSATION AND  
EMPLOYERS LIABILITY INSURANCE WITH TEXAS EXCEPTIONS***

The commissioner of insurance adopts the *National Council on Compensation Insurance (NCCI) Experience Rating Plan Manual for Workers Compensation and Employers Liability Insurance (NCCI ER Plan)* with Texas exceptions, as proposed by the September 16, 2014, TDI staff petition (Reference No. W-0914-07-I), with no amendments, as the last major step in Texas' transition to NCCI state status for workers' compensation purposes.

The NCCI ER Plan with Texas exceptions will replace the current Texas Experience Rating Plan (*Texas ER Plan*) for experience rating modifications with effective dates on or after July 1, 2015, which is the last part of the Texas Basic Manual of Rules, Classifications and Experience Rating Plan for Workers' Compensation and Employers' Liability Insurance (*Texas Basic Manual*) in effect. The commissioner expects that adoption of the *NCCI ER Plan* will make experience rating more responsive to individual risk experience by broadening the distribution of experience rating modifications.

### **Hearing and Comments**

TDI published notice of the proposal and hearing in the October 3, 2014, issue of the *Texas Register* (39 TexReg 7965). There were no comments made at the October 23, 2014, hearing, held under Docket No. 2771. There were two written comments, as well as a correction that amended the date of one of the comments. One item in one of the comments made a recommendation about deductible options, which is beyond the scope of this rule.

Both comments on this rule supported the adoption of the *NCCI ER Plan* with Texas exceptions as a logical, essential step in making workers' compensation insurance regulation in Texas more efficient. As an NCCI state, NCCI will administer certain workers' compensation functions in Texas that TDI is not statutorily required to perform. A commenter stated that the proposal was consistent with Commissioner's Order No. 3142, dated March 21, 2014, which adopted the *NCCI Basic Manual* with Texas exceptions and the national and Texas-specific endorsements and forms in the *NCCI Forms Manual*. TDI appreciates the commenters' support, and continues to work hard to ensure the best and most efficient administration of the Texas workers' compensation classification and premium calculation system.

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### **Justification**

Adopting the *NCCI ER Plan* with Texas exceptions is the last major step in Texas becoming an NCCI state. NCCI is a licensed advisory organization in Texas, the largest provider of workers' compensation and employee injury data and workers' compensation statistics in the nation, and the statistical agent and administrator for certain workers' compensation functions in Texas. The *NCCI ER Plan* is currently approved in 38 jurisdictions.

This rule adopts the *NCCI ER Plan* with Texas exceptions, which amend the *NCCI ER Plan* to comply with unique Texas statutory and rule requirements. NCCI will format the final Texas exceptions to match the style of its other manuals.

All NCCI manuals are currently available on the NCCI website to subscribers and affiliates of NCCI. The Texas exceptions to the *NCCI ER Plan* will also be available through the same system. NCCI has the staffing and technical resources to create, maintain, and support links between the information in the NCCI manuals and the Texas exceptions, which makes NCCI's electronic manuals very easy to use.

Carriers will benefit from having more uniform requirements for experience modifier calculation and application among states. Texas policyholders will benefit from the use of a more efficient and accurate system for calculating experience rating modifications, which results in a credit or debit that is closely aligned to the risk's experience; and from more frequent updates to the weights, ballasts, claim limitations, expected loss rates and discount ratios to assist in regulating the workers' compensation market. Carriers and policyholders will also benefit from NCCI's technical expertise, infrastructure, and support.

An experience rating plan helps ensure that rates reflect individual risk characteristics accurately and helps tailor a risk's premium prospectively, which provides employers a financial incentive for maintaining a safe workplace. It determines whether an insured's claims experience is better or worse than the average risk within that classification by comparing the actual loss experience of individual insureds with the average insured within the same classification.

The rules in the *NCCI ER Plan* and the *Texas ER Plan* cover the same areas:

- eligibility for experience rating modification
- calculation of the experience rating modification
- application of the experience rating modification.

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The substantive differences between the *NCCI ER Plan* and the *Texas ER Plan* are:

- amending the NCCI experience rating modification formula to include an experience rating adjustment that reduces the amount of the medical-only claims used in the experience rating modification calculation by 70 percent
- increasing the split point, which separates losses into primary and excess components, from \$5,000 to \$15,500
- updating the weighting values, which determine the portion of excess loss that is included in the calculation of the experience rating modifications, based on NCCI's loss costs rather than TDI's relativities
- updating the ballast values, which help reduce fluctuations in the experience rating modification, based on NCCI's loss costs rather than TDI's relativities
- updating the claim limitations, which help ensure that large claims do not have an undue impact on the experience rating modification
- updating the expected loss rates and discount ratios based on NCCI's loss costs rather than TDI's relativities
- amending the NCCI experience rating modification formula to include a maximum debit modification to ensure that all debit modifications remain within a reasonable range, and
- establishing a three-year transition period for Rule 4-C-4—Negotiated Modifications in the Texas exceptions to the *NCCI ER Plan*. Rule 4-C-4 will expire on July 1, 2018.

The *NCCI ER Plan* with Texas exceptions is expected to make experience rating modifications more responsive to individual risk experience by broadening the distribution of experience rating modifications. As a result, risks with credit experience rating modifications will generally see larger credits, while those with debit experience rating modifications will see larger debits. In addition, risks with primarily medical-only claims will likely see a decrease in the experience rating modification since the proposed NCCI formula discounts medical-only claims by 70 percent. Adopting the *NCCI ER Plan* is expected to increase the number of the largest credit experience rating modifications and the number of the largest debit experience rating modifications. However, the distribution shows that the majority of experience rating modifications will remain between 0.80 and 1.00, which is similar to the current distribution.

NCCI will update the weighting and ballast values, the claim limitations, the expected loss rates, and the discount ratios each year in its loss cost filing. The loss cost filing will reflect an analysis of the overall average Texas modification as well as the most recent experience at an individual class level. Through annual updates of the values in the calculation of the experience rating modification, NCCI will ensure that the *NCCI ER Plan* will continue to perform effectively in Texas.

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Many of the changes in the *NCCI ER Plan* work together to minimize the overall disruption to the industry. For example, the use of the experience rating adjustment decreases the amount of the losses included in the calculation of the experience modification, while the higher split point generally increases the amount of the losses included in the calculation of the experience rating modification. To reduce the impact to individual insureds, NCCI and staff recommend implementing the proposed changes in their entirety, as opposed to transitioning the implementation over time.

There are several new rules in the *NCCI ER Plan* with Texas exceptions that are not part of the current *Texas ER Plan*. None of the changes are expected to affect premiums. The new provisions include:

- application of a unity (1.00) factor for a risk that does not have a calculated experience rating modification or when the experience rating modification calculation results in a 1.00 modification
- application of an intrastate modifier for a risk to the premium developed in another state until there is sufficient experience to calculate an intrastate experience modification for a risk
- use of a rating effective date
- use of experience of certified self-insurers, authorized self-insured groups, and political subdivisions that have been self-insured in pools or funds
- requirements for an employer to notify its carrier of a change in ownership or combinability status
- combination of multiple entities for experience rating purposes
- impact of change of ownership and material change in operations on experience rating modification
- application of revised experience rating modification after a change in ownership
- employer actions that may be considered attempts to evade an experience rating modification
- actions NCCI may take to ensure the proper calculation and application of all experience rating modifications that are impacted by employer actions to evade an experience rating modification
- extension of an experience rating modification for a period other than 12 months
- specification of a time frame for revising the experience rating modification for a carrier receiving a recovery from a special fund or a subrogation action against a third party, and
- application of an experience rating modification issued late because the policyholder failed to cooperate with audits.

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The *NCCI ER Plan* changes several rules that currently exist in the *Texas ER Plan*, but which are not expected to affect premiums. These changes include:

- deletion of the “gross injustice” rule that has not been applied in at least 10 years, as there are other rules in the *NCCI ER Plan* to address withdrawing an experience rating modification under certain situations
- deletion of the rule outlining the appeal process for an experience rating modification as there is a new appeal process already in place in the *NCCI Basic Manual*
- deletion of the anniversary rating date rule
- amendment of the definition of joint venture to include all types of projects
- deletion of the irrelevant reference to the National Defense Plan, and
- deletion of the obsolete reference to contract stevedoring risks.

### **Statutory Authority**

Insurance Code Article 5.96 and §§2053.052, 1805.054, 1805.055, and 36.001 authorize the commissioner to take the requested action. Article 5.96(a) authorizes TDI to prescribe, promulgate, adopt, approve, amend, or repeal standard and uniform manual rules, rating plans, classification plans, statistical plans, and policy and endorsement forms for various lines of insurance, including workers’ compensation insurance. Article 5.96(b) allows any interested person to initiate proceedings with respect to any matter specified in subsection (a) by filing a written petition with the chief clerk.

Section 2053.052 requires the commissioner to adopt a uniform experience rating plan for workers’ compensation insurance and revise the rating plan at least once every five years.

Section 1805.054 allows a Texas workers’ compensation insurer to subscribe to an advisory organization. Section 1805.055(a) allows an insurer to submit to or receive from a licensed advisory organization statistical plans, historical data, prospective loss costs, supplementary rating information, policy forms and endorsements, research, rates of individual insurers that are effective at the time the information is submitted or received or that were previously in effect, and performance of inspections.

Section 36.001(a) allows the commissioner to adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other Texas laws.

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With the adoption of the *NCCI ER Plan* as the last major step in Texas' transition toward being an NCCI state, the commissioner of insurance and TDI will continue to fulfill all workers' compensation statutory requirements. These requirements include: 1) prescribing standard policy forms and a uniform policy; 2) approving nonstandard forms and endorsements; 3) determining hazards by classifications; 4) requiring carriers to use the classifications determined for Texas; 5) establishing classification relativities; 6) adopting a uniform experience rating plan; and 7) developing and updating statistical plans, as necessary.

### **Official Action Taken**

The commissioner adopts the *NCCI ER Plan* with Texas exceptions, as proposed, with no changes.

The commissioner orders that:

- (1) The *NCCI ER Plan* with Texas exceptions is effective for calculating experience rating modifications with effective dates on or after July 1, 2015.
- (2) The *Texas ER Plan* will remain in effect for calculating and revising experience rating modifications with effective dates before July 1, 2015.
- (3) Any future revisions to NCCI's manuals, including the *NCCI ER Plan*, will be considered under either the procedure in Insurance Code Article 5.96, or the alternate procedure in Commissioner's Order No. 3142, dated March 21, 2014.

A copy of the full text of the staff petition and related exhibits has been on file with the TDI chief clerk since September 16, 2014. The petition and exhibits are incorporated by reference into this order.

The commissioner adopts the *NCCI ER Plan* with Texas exceptions under Article 5.96 of the Texas Insurance Code. Article 5.96 exempts action taken under this article from the requirements of the Administrative Procedure Act (Government Code, Title 10, Chapter 2001), and authorizes TDI to prescribe, promulgate, adopt, approve, amend, or repeal standard and uniform manual rules, rating plans, classification plans, statistical plans, and policy and endorsement forms for various lines of insurance, including workers' compensation.

TDI certifies that the adoption of the *NCCI ER Plan* with Texas exceptions has been reviewed by legal counsel and found to be a valid exercise of TDI's authority.

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Issued in Austin, Texas on December 5, 2014.



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Sara Waitt, General Counsel  
Texas Department of Insurance

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Julia Rathgeber  
Commissioner of Insurance

Commissioner's Order No. **3708**